

FCC MAIL SECTION
Federal Communications Commission

DA 99-446

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Before the
Federal Communications Commission
Washington, D.C. 20554
DISPATCHED BY

In the Matter of)

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Giddings and Buda, Texas)

) MM Docket No. 99-69
) RM-9478
)
)

NOTICE OF PROPOSED RULE MAKING**Adopted: February 24, 1999****Released: March 5, 1999****Comment Date: April 26, 1999****Reply Date: May 11, 1999**

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed on behalf of LBJS Broadcasting Company, L.P. ("LBJS"), proposing the reallocation of Channel 268C1 from Giddings, Texas, to Buda, Texas. LBJS also requested that its license for Station KROX, Giddings, be modified to specify operation at Buda. LBJS indicated that it would file an application for Channel 268C1 at Buda, if the channel is allotted to the community.

2. LBJS filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O") 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, LBJS states that Channel 268C1 may be allotted to Buda consistent with the Commission's separation requirements and would provide full principal community service over the proposed community of license. Further, the proposed reallocation will bring a first local service to Buda, while Giddings continues to be served by Station KANJ(FM), a noncommercial educational station. LBJS states that Station KANJ(FM) is currently operating with program test authority and has a license application pending. In further support of its request, LBJS points out that Buda, Texas, was incorporated in 1948, has its own post office and zip code and has a population of 1,795 people according to the 1990 U.S. Census. LBJS states that Buda has a mayor and city council type government, is served by the Buda Volunteer Fire Department, the Mustang Ridge police department is located in Buda and the community has a local newspaper, the Free Press. LBJS continues that Buda has six schools, a public library, eleven local churches and a medical

center, along with numerous businesses and service establishments, including grocery stores, gas stations and a branch of the First American Bank. According to LBJS, community organizations such as the Buda Lions Club, the Buda Masonic Lodge, Onion Creek Senior Citizens, Buda 4-H and Buda Women's Club serve the needs and interests of the citizens of Buda. LBJS contends that the reallocation will provide Buda with its first local service which triggers priority three, while retention of Channel 268C1 in Giddings triggers priority four as Station KANJ(FM) is authorized to operate in Giddings. LBJS further states that the reallocation will not remove service from a rural area to serve an urban area and because its transmitter location will remain unchanged, there will be no decline in service area or number of listeners reached and because there is no change in facilities contemplated, Station KROX licensed to Buda will continue to provide a city grade signal to the residents of Giddings. Also, according to LBJS, Station KROX currently delivers a 70 dBu signal to less than 50 percent of the Austin Urbanized Area and is not required to provide a Tuck showing.

3. We believe LBJS's proposal warrants consideration since the reallocation of Channel 268C1 from Giddings, Texas, to Buda, Texas, could provide the community of Buda with its first local aural transmission service under our allotment priorities.¹ In addition, the proposed reallocation and change of community of license to Buda would not result in a loss of local service to Giddings since Station KANJ(FM) is authorized to serve the community. A staff engineering analysis has determined that Channel 268C1 can be allotted to Buda in compliance with the Commission's minimum distance separation requirements at LBJS's specified site.² We agree with LBJS that a Tuck showing is not necessary as our staff analysis shows that the 70 dBu contour encompasses 27.5% of the Austin Urbanized Area, well below the 50% coverage required for such a showing³. As requested, we shall also propose to modify the license for Station KROX to specify operation on Channel 268C1 at Buda, Texas, as its new community of license. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 268C1 at Buda.

4. In view of the fact that the proposed allotment could provide a first local service to Buda, Texas, the Commission believes it would serve the public interest to solicit comments on the

¹ The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3)]. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

² The coordinates for Channel 268C1 at Buda are 29-57-00 and 97-22-13.

³ If a station requests to change its community of license to one that is outside an urbanized area but whose signal would place a city grade, 70 dBu signal, over 50% or more of an Urbanized Area, the proponent is required to provide the same showings as currently required for those parties seeking to move to a community within an Urbanized Area. See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995). Although coverage by the 70 dBu signal covers less than 50% of the Austin Urbanized Area, our analysis does show that the 60 dBu contour will encompass 94.7% of the Austin Urbanized Area.

proposal to allot Channel 268C1 to Buda. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Giddings and Buda, as follows:

Community	Channel No.	
	Present	Proposed
Buda, Texas	-----	268C1
Giddings, Texas	268C1	-----

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **April 26, 1999**, and reply comments on or before **May 11, 1999**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Howard M. Weiss
Anne Goodwin Crump
Fletcher, Heald & Hildreth, P.L.C.
Eleventh Floor
Arlington, Virginia 22209

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.